

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on July 7, 2003, and the references cited therewith.

Claims 5 and 10 were amended; claims 2, 9, 15-16, and 32-37 were cancelled, and claims 38 and 39 were withdrawn, as a result, claims 1, 3-8, 10-14, 17-31, 40 and 41 are now pending in this application.

Affirmation of Election

Restriction to one of the following claims was required:

Claims 1, 3-8, 10-14, 17-31, 40-41, drawn to a patch, classified in class 424, subclass 443.

Claims 38-39, drawn to a kit, classified in class 206, subclass 570.

The Applicant elects claims in Group I, claims 1, 3-8, 10-14, 17-31, 40-41, and reserves the right to traverse the election.

§112 Rejection of the Claims

Claims 5-6 and 41 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Examiner has objected to claims 5-6 and 41 as confusing. The Applicant has amended claim 5 to cancel a reference to a "cellular structure." The Applicant does not understand why claim 41 is confusing and respectfully requests further explanation.

§103 Rejection of the Claims

Claims 1, 3-8, 10-12, 17-20, 23-27, 29-30 and 40-41 were rejected under 35 USC § 103(a) as being unpatentable over Cartmell et al. (U.S. 5,501,661) in view of Fischel-Ghodsian (U.S. 5,455,043).

The Cartmell et al. patent, 5,501,661, describes a dressing for a wound that includes a hydrogel pad and a porous material overlaying the hydrogel and acting as an adhering layer that

adheres the hydrogel to a wound without a use of an adhesive. There is no vapor emitting material stored within a vapor emitting portion as is claimed. The Examiner has argued that there must be some sort of material transferred from a wound to the environment and named, oxygen. However, oxygen is not a vapor. It is a gas. This is what the Cartmell patent states:

“The wound dressing product herein can be manufactured to any desirable size to provide a thin-film, fluid-absorbing dressing for a wound of any size. The wound dressing herein is conformable, adhesive around its perimeter portion, and nonadhesive over the wound site. The present invention also includes a moisture- and vapor-permeable porous layer which permits the transpiration of moisture through the wound dressing.”

The “transpiration of moisture” functionality of Cartmell et al. teaches away from the device claimed which includes “a vapor emitting material stored within the vapor emitting portion.”

Because of the application of the Cartmell et al device, is a wound dressing, any vapor exchange occurs after the device is applied. There is no vapor emitting material added to the device prior to applying to a wound. Further, there is no suggestion that the feature of a “vapor emitting material stored within the vapor emitting portion” would be useful or desirable.

The Fischel-Ghodsian patent, 5,455,043 (‘043), describes a device for releasing vapors in a controlled manner. The device includes a cellular portion for emitting vapor and a base, to which the cellular portion is adhered. The base is described as being a “laminate that consists of a metal foil lined polymer. The polymer may be any polymer that is compatible with the active compound. Suitable candidate polymers include polyethylene terephthalate, high density polyethylene, low density polyethylene, polypropylene, and polyvinylchloride and polyethylene/aluminized polyester/ethylene vinyl acetate.” Neither the ‘043 patent nor the Wick patent describes a use of a hydrogel or anything like a hydrogel. Additionally, Applicant asserts that there is no motivation to combine a chemical release structure, including a transdermal, with a wound dressing to obtain the present invention. As discussed above, there is no teaching in Cartmell suggesting a desirability of storing a vapor emitting material in a device prior to application. To the contrary, Cartmell et al. teaches away from this feature. Thus, the Cartmell et al. and Fischel-Ghodsian and Wick patents do not suggest combination.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 373-6976) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

Respectfully submitted,

MARK H. THENO

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6976

Date 3 March

By J. M. Kalis

Janal M. Kalis
Reg. No. 37,650

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 31st day of March, 2004.

Dawn M. Roode

Name

Dawn M. Roode

Signature